

THE HON'BLE MR JUSTICE V.V.S.RAO

-
WRIT PETITION No.16945 of 2006

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14.8.2006

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Between:

GAIL (INDIA) LTD., G.Konduru Village and Mandal,
Krishna District represented by its Chief Manager

... Petitioner

AND

Desam Venkata Krishna Reddy, S/o.China Ran Reddy
And another

... Respondents

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ORDER:

M/s.GAIL (India) Limited is the petitioner. The writ petition is filed assailing the order dated 17.10.2005 passed by the Court of II Additional District Judge, Vijayawada in LAOP No.301 of 2004 under Section 10(2) of the Petroleum and Mineral Pipelines (Acquisition of Right of User in Land) Act, 1962 (the Act, for brevity).

The petitioner is a company exclusively engaged in the sale and distribution of natural gas and Liquefied Petroleum Gas (LPG) to industrial consumers as allocated by the Government of India. Under the Act, it is authorized to acquire the right of user in the lands belonging to owners of the land so as to lay underground pipeline for transportation of natural gas/LPG. In one such situation, the Central Government on requisition of the petitioner acquired the right of user in the land admeasuring Acs.0.73 cents in survey No.119/1B2 and 119/2B2 situated at Sunnampadu Village of G.Konduru Mandal in Krishna District. The land is owned by the first respondent herein. In the process, the petitioner removed/cut two hundred and seven (207) teak plants, one neem tree and two palmyrah trees. The Competent Authority, namely, the second respondent determined the compensation for acquiring the right of user as well as the damage caused to the plants. A sum of Rs.24,796/- (which includes

Rs.19,716/- towards teak trees, which were cut, and a sum of Rs.4,380/- towards 1/10th market value of Acs.0.73 cents of land at Rs.60,000/- per acre) was awarded by the second respondent by proceedings dated 30.1.2004. The first respondent then moved the competent Civil Court by filing LAOP No.301 of 2004 claiming a sum of Rs.2,90,70,000/- (Rupees Two crores ninety lakhs and seventy thousand only) under Section 10(2) of the Act. The petitioner herein opposed the same by filing a counter affidavit and also leading evidence. The Court of II Additional District Judge, awarded a sum of Rs.3,56,900/- which includes Rs.3,51,900/- for teak trees and Rs.3,000/- for neam tree and Rs.2,000/- for palmyrah trees.

Learned Standing Counsel for the petitioner vehemently contends that the impugned judgment of the Civil Court is vitiated by error, in that the learned Judge applied multiplier and capitalization methods incorrectly taking into consideration the possible value of each tree, after a period of twenty (20) years. He would urge that the petitioner has produced the assessment reports of Forest Officials, Exs.B.2 and B.3, containing fair value for the teak trees, but the learned Judge failed to take this into consideration. He nextly contends that no jurisdiction is conferred on the Civil Court to award solatium and interest and, therefore, the award is unsustainable.

There is no doubt about the extent of land and the number of trees damaged/cut by the petitioner while laying the VSPL pipeline under the Act. Indeed, there is also no dispute regarding valuation of the land. The dispute before the Civil Court was the method and manner of calculating the value for the loss of the trees. Dealing with this aspect, the learned II Additional District Judge observed as under.

The Apex Court in (2000) 6 SCC 326 and the Gauhati High Court in AIR 2001 Gauhati 26, held that for fixing the compensation, the basis is loss of income of commercial trees and its span of life by adopting multiplier method. The A.P. High Court in 2003(6) ALD (NOC) 180 (DB) in Special Deputy Collector v K.D.Reddy held after referring to catena of decisions including AIR 1973 SC 2463 for even cheeni and orange trees, though not of any wood value, the capitalization of net income taking life span of the trees if not fell down has to be adopted and adopted 20 years capitalization, whereas in AIR 1959 AP 52, the 15 years capitalization adopted, whereas in 2000(4) ALT 345 = 2000(4) ALD 620 the multiplier 18 adopted. A perusal of the decisions clearly shows that, it is including for land value as total compensation for the acquisition. The Apex Court in the said decision, adopted the

multiplier 16 for a mango tree, a fruit bearing tree of 10 years old, and the Gauhati High Court adopted the multiplier 18. Therefore, from the above guidelines for fixation of compensation, a multiplier of 17 is fixed for a commercial tree from its prospective net income at the age of cutting and not from present value.

The legal position as above is not disputed. Therefore, this Court does not find any grave error in the impugned judgment, in which the method of assessing the prospective value of teak trees was applied. Secondly, the Civil Court also excluded the land cost keeping in view the ratio laid down by the Supreme Court that when multiplier method is applied for assessing the value due to loss of trees, the multiplier takes care of the land value as well. Therefore, there is no error in the impugned order requiring a correction. The submission regarding solatium and interest is also devoid of any merit. Section 10(3) of the Act requires the District Judge to have regard to the damage or loss sustained by the person in the land by reason of removal of trees or standing crops, the temporary severance of the land under which the pipeline has been laid and injury to the other property whether movable or immovable or the earnings of such person caused in any other manner. The provisions does not prohibit the District Judge for awarding solatium and interest, which in the opinion of this Court falls within Section 10(3)(iii) of the Act. There is a discretion vested in the Civil Court to award solatium to compensate injury to the property. Under Section 11(2) of the Act, if the amount of compensation is not deposited within the time prescribed, the Acquiring Authority shall be liable to pay interest at 6% per annum from the date on which the compensation has to be deposited. Therefore, the submission cannot be accepted.

The Civil Court has considered the questions with reference to the decided cases and, therefore, this Court does not find any infirmity in the impugned order. The writ petition is accordingly dismissed. No costs.

(V.V.S.RAO, J)

August 14, 2006.

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